

House File 2327

H-8333

Amend House File 2327 as follows:

1. By striking everything after the enacting clause and inserting:

<DIVISION I

IOWA COMPREHENSIVE PETROLEUM

UNDERGROUND STORAGE TANK FUND

Section 1. Section 455B.474, subsection 1, paragraph d, subparagraph (2), unnumbered paragraph 1, Code Supplement 2009, is amended to read as follows:

A site shall be classified as either high risk, low risk, or no action required, as determined by a certified groundwater professional.

Sec. 2. Section 455B.474, subsection 1, paragraph d, subparagraph (2), subparagraph division (a), unnumbered paragraph 1, Code Supplement 2009, is amended to read as follows:

A site shall be considered high risk when ~~it is determined~~ a certified groundwater professional determines that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

Sec. 3. Section 455B.474, subsection 1, paragraph d, subparagraph (2), subparagraph division (b), unnumbered paragraph 1, Code Supplement 2009, is amended to read as follows:

A site shall be considered low risk ~~under any of the following conditions~~ when a certified groundwater professional determines that low risk conditions exist as follows:

Sec. 4. Section 455B.474, subsection 1, paragraph d, subparagraph (2), subparagraph divisions (c) and (e), Code Supplement 2009, are amended to read as follows:

(c) A site shall be considered no action required ~~if and a no further action certificate shall be issued by the department when a certified groundwater professional determines that contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.~~

(e) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site. ~~However, if the report is found to be within ninety days of receipt of a corrective action design report, the department identifies material information in the corrective action design report~~

1 that is inaccurate or incomplete, and if based upon
2 information in the report the risk classification
3 of the site cannot be reasonably determined by
4 the department based upon industry standards, the
5 department shall notify the groundwater professional
6 that the corrective action design report is not
7 accepted, and the department shall work with the
8 groundwater professional to correct the material
9 information or to obtain the additional information
10 necessary to appropriately ~~classify the site~~ determine
11 the corrective action response requirements as soon
12 as practicable. A groundwater professional who
13 knowingly or intentionally makes a false statement
14 or misrepresentation which results in a mistaken
15 classification of a site shall be guilty of a
16 serious misdemeanor and shall have the groundwater
17 professional's certification revoked under this
18 section.

19 Sec. 5. Section 455B.474, subsection 1, paragraph
20 f, subparagraphs (5), (6), and (7), Code Supplement
21 2009, are amended to read as follows:

22 (5) A corrective action design report submitted by
23 a groundwater professional shall be accepted by the
24 department and shall be primarily relied upon by the
25 department to determine the corrective action response
26 requirements of the site. However, if ~~the corrective~~
27 ~~action design report is found to be within ninety days~~
28 of receipt of a corrective action design report, the
29 department identifies material information in the
30 corrective action design report that is inaccurate or
31 incomplete, and if based upon information in the report
32 the appropriate corrective action response cannot be
33 reasonably determined by the department based upon
34 industry standards, the department shall notify the
35 groundwater professional that the corrective action
36 design report is not accepted, and the department
37 shall work with the groundwater professional to
38 correct the material information or to obtain the
39 additional information necessary to appropriately
40 determine the corrective action response requirements
41 as soon as practicable. A groundwater professional
42 who knowingly or intentionally makes a false statement
43 or misrepresentation which results in an improper or
44 incorrect corrective action response shall be guilty of
45 a serious misdemeanor and shall have the groundwater
46 professional's certification revoked under this
47 section.

48 (6) Low risk sites shall be monitored as deemed
49 necessary by the department consistent with industry
50 standards. Monitoring shall not be required on a site

1 which has received a no further action certificate.
2 A site that has maintained less than the applicable
3 target level for four consecutive sampling events shall
4 be reclassified as a no further action site regardless
5 of exit monitoring criteria and guidance.

6 (7) An owner or operator may elect to proceed with
7 additional corrective action on the site. However,
8 any action taken in addition to that required pursuant
9 to this paragraph "f" shall be solely at the expense
10 of the owner or operator and shall not be considered
11 corrective action for purposes of section 455G.9,
12 unless otherwise previously agreed to by the board and
13 the owner or operator. Corrective action taken by an
14 owner or operator due to the department's failure to
15 meet the time requirements provided in subparagraph
16 (5), shall be considered corrective action for purposes
17 of section 455G.9.

18 Sec. 6. Section 455B.474, subsection 1, paragraph
19 h, subparagraphs (1) and (3), Code Supplement 2009, are
20 amended to read as follows:

21 (1) A no further action certificate shall be
22 issued by the department for a site which has been
23 classified as a no further action site or which
24 has been reclassified pursuant to completion of a
25 corrective action plan or monitoring plan to be a no
26 further action site by a groundwater professional,
27 unless within ninety days of receipt of the report
28 submitted by the groundwater professional classifying
29 the site, the department notifies the groundwater
30 professional that the report and site classification
31 are not accepted and the department identifies
32 material information in the report that is inaccurate
33 or incomplete which causes the department to be
34 unable to accept the classification of the site.
35 An owner or operator shall not be responsible for
36 additional assessment, monitoring, or corrective
37 action activities at a site that is issued a no further
38 action certificate unless it is determined that the
39 certificate was issued based upon false material
40 statements that were knowingly or intentionally made
41 by a groundwater professional and the false material
42 statements resulted in the incorrect classification of
43 the site.

44 (3) A certificate shall be recorded with the county
45 recorder. The owner or operator of a site who has been
46 issued a certificate under this paragraph "h" or a
47 subsequent purchaser of the site shall not be required
48 to perform further corrective action solely because
49 action standards are changed at a later date. A
50 certificate shall not prevent the department from

1 ordering corrective action of a new release.

2 Sec. 7. Section 455G.3, Code 2009, is amended by
3 adding the following new subsections:

4 NEW SUBSECTION. 6. For the fiscal year beginning
5 July 1, 2010, and each fiscal year thereafter, there
6 is appropriated from the Iowa comprehensive petroleum
7 underground storage tank fund to the department of
8 natural resources two hundred thousand dollars for
9 purposes of technical review support to be conducted
10 by nongovernmental entities for leaking underground
11 storage tank assessments.

12 NEW SUBSECTION. 7. For the fiscal year beginning
13 July 1, 2010, there is appropriated from the Iowa
14 comprehensive petroleum underground storage tank fund
15 to the department of natural resources one hundred
16 thousand dollars for purposes of database modifications
17 necessary to accept external data regarding underground
18 storage tank inspections conducted by nongovernmental
19 entities.

20 NEW SUBSECTION. 8. For the fiscal year beginning
21 July 1, 2010, and each fiscal year thereafter, there
22 is appropriated from the Iowa comprehensive petroleum
23 underground storage tank fund to the department of
24 agriculture and land stewardship two hundred fifty
25 thousand dollars for the sole and exclusive purpose
26 of inspecting fuel quality at pipeline terminals
27 and renewable fuel production facilities, including
28 salaries, support, maintenance, and miscellaneous
29 purposes.

30 NEW SUBSECTION. 9. Beginning September 1, 2010,
31 the board shall administer safety training, hazardous
32 material training, environmental training, and
33 underground storage tank operator training in the
34 state to be provided by an entity certified by the
35 department of natural resources. The training provided
36 pursuant to this subsection shall be available to any
37 tank operator in the state at an equal and reasonable
38 cost and shall not be conditioned upon any other
39 requirements. Each fiscal year, the board shall not
40 expend more than two hundred fifty thousand dollars
41 from the Iowa comprehensive petroleum underground
42 storage tank fund for purposes of administering this
43 subsection.

44 Sec. 8. Section 455G.4, subsection 1, paragraph a,
45 subparagraphs (3) and (5), Code Supplement 2009, are
46 amended to read as follows:

47 (3) ~~The commissioner of insurance, or the~~
48 ~~commissioner's designee.~~ An employee of the department
49 of management who has been designated as a risk manager
50 by the director of the department of management.

1 (5) Two owners or operators appointed by the
2 governor. ~~One of the owners or operators appointed~~
3 ~~pursuant to this subparagraph shall have been a~~
4 ~~petroleum systems insured through the underground~~
5 ~~storage tank insurance fund as it existed on June 30,~~
6 ~~2004, or a successor to the underground storage tank~~
7 ~~insurance fund and shall have been an insured through~~
8 ~~the insurance account of the comprehensive petroleum~~
9 ~~underground storage tank fund on or before October~~
10 ~~26, 1990. One of the owners or operators appointed~~
11 ~~pursuant to this subparagraph shall be self-insured. as~~
12 ~~follows:~~

13 (a) One member shall be an owner or operator who is
14 self-insured.

15 (b) One member shall be a member of the petroleum
16 marketers and convenience stores of Iowa or its
17 designee.

18 Sec. 9. Section 455G.9, subsection 1, paragraphs d
19 and k, Code 2009, are amended to read as follows:

20 d. One hundred percent of the costs of corrective
21 action and third-party liability for a release situated
22 on property acquired by a county for delinquent taxes
23 pursuant to chapters 445 through 448, for which a
24 responsible owner or operator able to pay, other
25 than the county, cannot be found. A county is not
26 a "responsible party" for a release in connection
27 with property which it acquires in connection with
28 delinquent taxes, and does not become a responsible
29 party by sale or transfer of property so acquired. In
30 such situations, the board may act as an agent. Actual
31 corrective action on the site shall be overseen by the
32 department, the board, and a certified groundwater
33 professional. Third-party liability specifically
34 excludes any claim, cause of action, or suit, for
35 personal injury including, but not limited to, loss
36 of use or of private enjoyment, mental anguish, false
37 imprisonment, wrongful entry or eviction, humiliation,
38 discrimination, or malicious prosecution. Reasonable
39 acquisition costs do not include any taxes or costs
40 related to the collection of taxes.

41 k. Pursuant to an agreement between the board and
42 the department of natural resources, assessment and
43 corrective action arising out of releases at sites for
44 which a no further action certificate has been issued
45 pursuant to section 455B.474, when the department
46 determines that an unreasonable risk to public health
47 and safety may still exist or that previously reported
48 upon applicable target levels have been exceeded. At
49 a minimum, the agreement shall address eligible costs,
50 contracting for services, and conditions under which

1 sites may be reevaluated.

2 Sec. 10. Section 455G.9, subsection 4, Code 2009,
3 is amended to read as follows:

4 4. *Minimum copayment schedule.*

5 a. An owner or operator shall be required to pay
6 the greater of five thousand dollars or eighteen
7 percent of the first eighty thousand dollars of the
8 total costs of corrective action for that release,
9 except for an innocent landowner claim in which case a
10 copayment is not required.

11 b. If a site's actual expenses exceed eighty
12 thousand dollars, the remedial account shall pay the
13 remainder, as required by federal regulations, of
14 the total costs of the corrective action for that
15 release, not to exceed one million dollars, except that
16 a county shall not be required to pay a copayment in
17 connection with a release situated on property acquired
18 in connection with delinquent taxes, as provided in
19 subsection 1, paragraph "d", unless subsequent to
20 acquisition the county actively operates a tank on the
21 property for purposes other than risk assessment, risk
22 management, or tank closure.

23 Sec. 11. Section 455G.9, subsection 7, Code 2009,
24 is amended to read as follows:

25 7. *Expenses of cleanup not required.* When an
26 owner or operator who is eligible for benefits under
27 this chapter is allowed by the department of natural
28 resources to monitor in place, the expenses incurred
29 for cleanup beyond the level required by the department
30 of natural resources ~~are not~~ may be covered under any
31 of the accounts established under the fund only if
32 approved by the board as cost-effective relative to
33 the department accepted monitoring plan or relative
34 to the repeal date specified in section 424.19. The
35 cleanup expenses incurred for work completed beyond
36 what is required is the responsibility of the person
37 contracting for the excess cleanup. The board shall
38 seek to terminate the responsible party's environmental
39 liabilities at such sites prior to the board ceasing
40 operation.

41 Sec. 12. EFFECTIVE UPON ENACTMENT AND RETROACTIVE
42 APPLICABILITY. The section of this division of this
43 Act amending section 455G.9, subsection 4, being deemed
44 of immediate importance, takes effect upon enactment
45 and applies retroactively to January 1, 2010.

46 DIVISION II

47 BONDING AUTHORITY

48 Sec. 13. Section 455G.2, subsection 1, Code 2009,
49 is amended by striking the subsection.

50 Sec. 14. Section 455G.2, subsection 3, Code 2009,

1 is amended to read as follows:

2 3. "*Bond*" means a bond, note, or other obligation
3 issued by the authority treasurer of state for the fund
4 and the purposes of this chapter.

5 Sec. 15. Section 455G.3, subsection 2, Code 2009,
6 is amended to read as follows:

7 2. The board shall assist Iowa's owners and
8 operators of petroleum underground storage tanks in
9 complying with federal environmental protection agency
10 technical and financial responsibility regulations
11 by establishment of the Iowa comprehensive petroleum
12 underground storage tank fund. The authority treasurer
13 of state may issue its bonds, or series of bonds, to
14 assist the board, as provided in this chapter.

15 Sec. 16. Section 455G.6, subsections 7 through 9,
16 Code Supplement 2009, are amended to read as follows:

17 7. The board may contract with the
18 authority treasurer of state for the
19 authority treasurer of state to issue bonds and do
20 all things necessary with respect to the purposes
21 of the fund, as set out in the contract between the
22 board and the authority treasurer of state. The
23 board may delegate to the authority treasurer of
24 state and the authority treasurer of state shall
25 then have all of the powers of the board which are
26 necessary to issue and secure bonds and carry out the
27 purposes of the fund, to the extent provided in the
28 contract between the board and the authority treasurer
29 of state. The authority treasurer of state may
30 issue the authority's treasurer of state's bonds
31 in principal amounts which, in the opinion of the
32 board, are necessary to provide sufficient funds for
33 the fund, the payment of interest on the bonds, the
34 establishment of reserves to secure the bonds, the
35 costs of issuance of the bonds, other expenditures
36 of the authority treasurer of state incident to and
37 necessary or convenient to carry out the bond issue
38 for the fund, and all other expenditures of the board
39 necessary or convenient to administer the fund.
40 The bonds are investment securities and negotiable
41 instruments within the meaning of and for purposes of
42 the uniform commercial code, chapter 554.

43 8. Bonds issued under this section are payable
44 solely and only out of the moneys, assets, or revenues
45 of the fund, all of which may be deposited with
46 trustees or depositories in accordance with bond
47 or security documents and pledged by the board to
48 the payment thereof, and are not an indebtedness
49 of this state ~~or the authority~~, or a charge against
50 the general credit or general fund of the state ~~or~~

1 ~~the authority~~, and the state shall not be liable for
2 any financial undertakings with respect to the fund.
3 Bonds issued under this chapter shall contain on their
4 face a statement that the bonds do not constitute an
5 indebtedness of the state ~~or the authority~~.

6 9. The proceeds of bonds issued by the
7 ~~authority treasurer of state~~ and not required for
8 immediate disbursement may be deposited with a trustee
9 or depository as provided in the bond documents
10 and invested in any investment approved by the
11 ~~authority treasurer of state~~ and specified in the trust
12 indenture, resolution, or other instrument pursuant
13 to which the bonds are issued without regard to any
14 limitation otherwise provided by law.

15 Sec. 17. Section 455G.6, subsection 10, paragraph
16 b, Code Supplement 2009, is amended to read as follows:

17 b. Negotiable instruments under the laws of
18 the state and may be sold at prices, at public or
19 private sale, and in a manner, as prescribed by the
20 ~~authority treasurer of state~~. Chapters 73A, 74, 74A
21 and 75 do not apply to their sale or issuance of the
22 bonds.

23 Sec. 18. Section 455G.6, subsection 12, Code
24 Supplement 2009, is amended to read as follows:

25 12. Bonds must be authorized by a trust
26 indenture, resolution, or other instrument of the
27 ~~authority treasurer of state~~, approved by the board.
28 However, a trust indenture, resolution, or other
29 instrument authorizing the issuance of bonds may
30 delegate to an officer of the issuer the power to
31 negotiate and fix the details of an issue of bonds.

32 Sec. 19. Section 455G.7, Code Supplement 2009, is
33 amended to read as follows:

34 **455G.7 Security for bonds — capital reserve fund —**
35 **irrevocable contracts.**

36 1. a. For the purpose of securing one or more
37 issues of bonds for the fund, the ~~authority treasurer~~
38 of state, with the approval of the board, may authorize
39 the establishment of one or more special funds, called
40 "*capital reserve funds*". The ~~authority treasurer~~
41 of state may pay into the capital reserve funds the
42 proceeds of the sale of its bonds and other money
43 which may be made available to the ~~authority treasurer~~
44 of state from other sources for the purposes of the
45 capital reserve funds. Except as provided in this
46 section, money in a capital reserve fund shall be used
47 only as required for any of the following:

48 a. (1) The payment of the principal of and
49 interest on bonds or of the sinking fund payments with
50 respect to those bonds.

1 ~~b.~~ (2) The purchase or redemption of the bonds.
2 ~~c.~~ (3) The payment of a redemption premium
3 required to be paid when the bonds are redeemed before
4 maturity.
5 ~~b.~~ However, money in a capital reserve fund shall
6 not be withdrawn if the withdrawal would reduce the
7 amount in the capital reserve fund to less than the
8 capital reserve fund requirement, except for the
9 purpose of making payment, when due, of principal,
10 interest, redemption premiums on the bonds, and making
11 sinking fund payments when other money pledged to the
12 payment of the bonds is not available for the payments.
13 Income or interest earned by, or increment to, a
14 capital reserve fund from the investment of all or part
15 of the capital reserve fund may be transferred by the
16 authority treasurer of state to other accounts of the
17 fund if the transfer does not reduce the amount of the
18 capital reserve fund below the capital reserve fund
19 requirement.
20 2. If the authority treasurer of state decides
21 to issue bonds secured by a capital reserve fund,
22 the bonds shall not be issued if the amount in the
23 capital reserve fund is less than the capital reserve
24 fund requirement, unless at the time of issuance of
25 the bonds the authority treasurer of state deposits
26 in the capital reserve fund from the proceeds of the
27 bonds to be issued or from other sources, an amount
28 which, together with the amount then in the capital
29 reserve fund, is not less than the capital reserve fund
30 requirement.
31 3. In computing the amount of a capital reserve
32 fund for the purpose of this section, securities in
33 which all or a portion of the capital reserve fund
34 is invested shall be valued by a reasonable method
35 established by the authority treasurer of state.
36 Valuation shall include the amount of interest earned
37 or accrued as of the date of valuation.
38 4. In this section, "*capital reserve fund*
39 *requirement*" means the amount required to be on
40 deposit in the capital reserve fund as of the date of
41 computation.
42 5. To assure maintenance of the capital reserve
43 funds, the authority treasurer of state shall, on
44 or before July 1 of each calendar year, make and
45 deliver to the governor the authority's treasurer of
46 state's certificate stating the sum, if any, required
47 to restore each capital reserve fund to the capital
48 reserve fund requirement for that fund. Within
49 thirty days after the beginning of the session of the
50 general assembly next following the delivery of the

1 certificate, the governor may submit to both houses
2 printed copies of a budget including the sum, if any,
3 required to restore each capital reserve fund to the
4 capital reserve fund requirement for that fund. Any
5 sums appropriated by the general assembly and paid
6 to the authority treasurer of state pursuant to this
7 section shall be deposited in the applicable capital
8 reserve fund.

9 6. All amounts paid by the state pursuant to this
10 section shall be considered advances by the state and,
11 subject to the rights of the holders of any bonds of
12 the authority treasurer of state that have previously
13 been issued or will be issued, shall be repaid to the
14 state without interest from all available revenues of
15 the fund in excess of amounts required for the payment
16 of bonds of the authority treasurer of state, the
17 capital reserve fund, and operating expenses.

18 7. If any amount deposited in a capital reserve
19 fund is withdrawn for payment of principal, premium,
20 or interest on the bonds or sinking fund payments with
21 respect to bonds thus reducing the amount of that fund
22 to less than the capital reserve fund requirement, the
23 authority treasurer of state shall immediately notify
24 the governor and the general assembly of this event and
25 shall take steps to restore the capital reserve fund
26 to the capital reserve fund requirement for that fund
27 from any amounts designated as being available for such
28 purpose.

29 Sec. 20. Section 455G.8, subsection 2, Code 2009,
30 is amended to read as follows:

31 2. *Statutory allocations fund.* The moneys
32 credited from the statutory allocations fund under
33 section 321.145, subsection 2, paragraph "a", shall
34 be allocated, consistent with this chapter, among
35 the fund's accounts, for debt service and other fund
36 expenses, according to the fund budget, resolution,
37 trust agreement, or other instrument prepared or
38 entered into by the board or authority treasurer of
39 state under direction of the board.

40 Sec. 21. REPEAL. Section 16.151, Code 2009, is
41 repealed.

42 Sec. 22. REPEAL. 1989 Iowa Acts, chapter 131,
43 section 63, as amended by 2009 Iowa Acts, chapter 184,
44 section 39, is repealed.

45 Sec. 23. EFFECTIVE UPON ENACTMENT. This division
46 of this Act, being deemed of immediate importance,
47 takes effect upon enactment.>

48 2. Title page, line 2, after <fund> by inserting
49 <and including effective date and retroactive
50 applicability provisions>

1 3. By renumbering as necessary.

S. OLSON of Clinton